UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JASON B. NICHOLAS,

Plaintiff,

-against-

WILLIAM BRATTON, Police Commissioner, New York City Police Department; STEPHEN DAVIS, Deputy Commissioner for Public Information, New York City Police Department; MICHAEL DEBONIS, Detective, Office of the Deputy Commissioner for Public Information, New York City Police Department; and the CITY OF NEW YORK,

Defendants.

Proposed
AMENDED COMPLAINT

15-Civ.-9592 (JPO)

Jury Trial Demanded

INTRODUCTION

1. This is an action for civil rights violations. Plaintiff seeks declaratory and injunctive relief, as well as monetary damages.

2. Plaintiff is a professional photojournalist based in New York City. On October 30, 2015, Plaintiff was on assignment for the *New York Daily News*. While on assignment, he was tasked with obtaining still and video imagery of the rescue of two construction workers who had become trapped in a partial building collapse. While documenting official rescue efforts, Defendants abridged Plaintiff's news-gathering by physically removing him from the scene. Defendant Davis and DeBonis then revoked his NYPD-issued press credential. This lawsuit ensued.

3. Defendants' actions violated Plaintiff's First, Fourth and Fourteenth Amendment right to engage in news-gathering. Defendants' removal of Plaintiff from the scene did not serve a compelling and content-neutral state interest. Instead, it was a content-based prior restraint of news-gathering intended to prevent the capture and communication of imagery of dead or injured victims. Even if Defendants' removal of Plaintiff was intended to serve a content-neutral interest, it was not narrowly tailored – or even reasonably related – to serve that objective.

4. Defendants' actions also violated Plaintiff's right to equal protection of law. Defendants allowed seven similarly-situated news-gatherers to operate at the scene. Five of these news-gatherers were allowed to operate without restriction – four photographers employed by the City of New York, and one from the local utility Consolidated Edison. Two NYPD-credentialed photojournalists were allowed to operate at the scene as well, behind police lines, albeit from inside a private commercial establishment. All of these news-gatherers engaged in substantially the same news-gathering activity as Plaintiff. None of them were removed from the scene. The two NYPD-credentialed photojournalists did not have their press credentials revoked by Defendants. Removing Plaintiff, and only Plaintiff, and revoking Plaintiff's press credential, and only Plaintiff's, violated Plaintiff's equal protection rights.

5. Besides removing Plaintiff from the scene, Defendants Davis and DeBonis summarily revoked Plaintiff's NYPD-issued press credential, in violation of Plaintiff's

Fourteenth Amendment right to Due Process of Law. First, Defendants failed to afford Plaintiff "fair warning" that any objectionable conduct he engaged in was prohibited. Second, Defendants failed to afford Plaintiff any meaningful opportunity to be heard, before a fair and impartial decision-maker, for almost seven months, until May 19, 2016.

6. Lastly, Defendants' direct restriction of Plaintiff's news-gathering activity, as well as their wholly arbitrary revocation of his NYPD-issued press credential, were not isolated actions. Instead, Defendants' actions were part of, and pursuant to, an unwritten NYPD policy, custom and practice of interfering with, and attempting to shape, constitutionally-protected news-gathering activity, that Defendants Bratton, Davis and the City of New York approved, acquiesced to, condone and encourage. As Defendant Bratton himself has said: "With the press, you can't control what they write, but you can try to influence it as best you can."

JURISDICTION

7. This is a civil rights action under the United States Constitution and 42 U.S.C. § 1983. The Court has jurisdiction in this matter pursuant to 28 U.S.C. §§ 1331 and 1343. The declaratory and injunctive relief sought is authorized by 28 U.S.C. §§ 2201 and 2202, 42 U.S.C. § 1983 and Rule 57 of the F.R.C.P.

8. This Court is an appropriate venue for this action pursuant to 28 U.S.C. 1391(b)(1) and (b)(2). The actions complained of took place in this judicial district; evidence and other records relevant to the allegations are maintained in this judicial

district; and the Defendants are present and regularly conduct business in this judicial district.

PARTIES

9. Plaintiff Jason B. Nicholas is an independent journalist, producing written reporting, still imagery and video. From 2006, until the events at issue, he earned a living as an independent photojournalist in New York City, employed on a freelance basis by various media outlets, including the *New York Post*, the *New York Daily News* and the *Daily Mail Online*. In addition, Plaintiff's work is globally syndicated via *Corbis Images*, and regularly appears in print and web-based publications around the world, as well as broadcast television.

10. William Bratton is the Commissioner of the New York City Police Department, and was at the time of the actions alleged in this Amended Complaint. He is responsible for establishing policies and procedures for officers of the NYPD and its various bureaus to follow. He personally appointed Stephen Davis to be his Deputy Commissioner for Public Information. Bratton was personally aware of, explicitly approved and otherwise sanctioned through deliberate indifference an unwritten municipal policy restricting news-gathering by (i) physically blocking cameras and otherwise physically interfering with news-gatherers engaged in news-gathering; (ii) confining news-gatherers to so-called "press pens" or other areas that do not provide visual or audio access to news-worthy events; and (iii) arbitrarily confiscating NYPD-

issued press credentials from news-gatherers, who try to assert their legal right to engage in uncensored news-gathering. Defendant Bratton's actions, and in-acton, as alleged in the original Complaint and in this Amended Complaint, violated Plaintiff's rights under the First, Fourth and Fourteenth Amendment rights.

11. Defendant Stephen Davis is the NYPD's Deputy Commissioner for Public Information (hereinafter referred to as "DCPI"). Davis was personally appointed by NYPD Commissioner Bratton. Davis has municipal policy-making authority. Davis was aware of, explicitly approved and otherwise sanctioned through deliberate indifference an unwritten municipal policy restricting news-gathering by (i) physically blocking cameras and otherwise physically interfering with news-gatherers engaged in news-gathering; (ii) confining news-gatherers to so-called "press pens" or other areas that do not provide visual or audio access to news-worthy events; and (iii) arbitrarily confiscating NYPD-issued press credentials from news-gatherers, who try to assert their legal right to engage in uncensored news-gathering. Davis also personally participated in the decision to restrict Plaintiff's news-gathering, and to revoke Plaintiff's NYPD-issued press credential. Defendant Davis's actions, and in-acton, as alleged in the original Complaint and in this Amended Complaint, violated Plaintiff's rights under the First, Fourth and Fourteenth Amendment rights.

12. Michael DeBonis is an NYPD detective, currently detailed to DCPI. In DCPI, his primary responsibility is the issuance of press credentials. DeBonis also

works in the field and appears at crime, fire, accident, protest and event scenes and regulates news-gatherers' access to such scenes and events. He personally participated in the decision to restrict Plaintiff's news-gathering on October 30, 2015, and to revoke Plaintiff's NYPD-issued press credential. Defendant DeBonis's actions, and in-acton, as alleged in the original Complaint and in this Amended Complaint, violated Plaintiff's rights under the First, Fourth and Fourteenth Amendment rights.

13. Defendant New York City is a duly organized municipal entity within the State of New York. It is responsible for supervising its police department and its police officers to ensure that they do not violate citizens' constitutional rights, including the customs, practices and unwritten policies its police officers enforce.

14. At all times relevant to this Complaint, Defendants acted under color of state law.

FACTS

Historical Background: the Tradition of "Close Access"

15. The NYPD began issuing press credentials to *bona fide* journalists shortly after the beginning of the 20th Century. See, e.g., Pl.'s Ex. A; *New York Press Photographers*, by Marc A. Hermann at 7 (Arcadia Publishing, 2015). It began issuing press credentials to counter thefts that were occurring at fire scenes. There would be a fire, and thieves would loot affected buildings – sometimes while the fire was still burning. To prevent this, the NYPD began establishing security perimeters around fire

scenes preventing everyone but police, firefighters and NYPD-credentialed journalists from entering.

16. At first, only writers were issued press credentials, or "fire cards." The cards explicitly empowered their holders to cross police and fire lines to engage in news-gathering. Photographers, at first, were left out. In order to advocate for press credentials, news photographers banded together and formed the *New York Press Photographer's Association* – the oldest professional fraternity of news-photographers in the United States. "Before long, photographers were able to obtain these essential tools for themselves through the efforts of the association." Hermann, *New York Press Photographers*, at 7.

17. The NYPD had a mostly positive relationship with professional news-gatherers for much of the 20th Century. The NYPD had a "long-standing practice of cooperating with members of the press and providing them with access to accident, crime, fire, and demonstration scenes unless safety interests or proper performance of police duties required otherwise." Pl.'s Ex. B at 6 (Complaint, The Daily News v. Giuliani, et al., unfiled, May, 1999). In practice, the access afforded to professional journalists by the NYPD was, as a matter of course, "close." See, e.g., Pl.'s Exs. C, D, & E; Brian Wallis, "Weegee: Murder is my Business" (Prestel Publishing, 2013); Jill Freedman, "Street Cops" (Harper & Row, 1982).

18. The long-standing NYPD practice and custom of facilitating professional news-gatherers' close access to crime, fire, accident, protest and event scenes was codified in NYPD regulations in 1992, in NYPD Patrol Guide Procedure No. 212-49, "INCIDENTS INVOLVING MEDIA REPRESENTATIVES." Pl.'s Ex. F. Under the regulation, professional news-gatherers must be allowed "access as close as possible, with a clear line of sight and within hearing range of the incident." Id. at 2.

19. While the NYPD's relationship with professional news-gatherers may have once been good, its relationship with non-professional, citizen news-gatherers was more fraught. Upon information and belief, non-professional, non-NYPD credentialed citizen news-gathers were routinely subjected to arrest for engaging in lawful news-gathering activity. The classic example: a citizen witnesses police action that appears to be wrongful and asks the police involved for identifying information, such as a name or badge number, or takes a photograph, or refuses a police order to "move along," and the police arrest the citizen for "obstruction." See N.Y. Penal Law § 195.05 (proscribing "obstructing governmental administration").

20. In response to interference with non-professional news-gathering like that described in paragraph 19, the City of New York and the NYPD entered into a Consent Decree in 1977. Black v. Codd et al., SDNY, No. 73-Civ.-5283, Stipulation & Order, June 1, 1977. Pl.'s Ex. G. According to the agreement,

> when a person (or persons) is detained, stopped or arrested in public areas, a person or persons not involved in the conduct for which the first person is stopped or arrested may remain in the vicinity of the stop or arrest as an onlooker or onlookers …
>
> 1. A person remaining in the vicinity of a stop or arrest (herein after an "onlooker") shall not be subject to arrest for violation of Penal Law §195.05 unless the officer has probable cause to believe a violation of § 195.05 exists.
>
> 2. None of the following constitutes probable cause for arrest or detention of an onlooker unless the safety of officers or other persons is directly endangered or the officer reasonably believes they are endangered or the law is otherwise violated:
>
> (a) Speech alone, even though rude or vulgar;
>
> (b) Requesting and making notes of shield numbers or names of officers;
>
> (c) Taking photographs;
>
> (d) Remaining in the vicinity of the stop or arrest.

Pl.'s Ex. G at 1-2.

The Unwritten NYPD Policy and Practice to Suppress, Shape and Abridge News-Gathering, up to the Present Day

21. The generally good relationship between the professional press corp and the NYPD changed in 1993, with the election of Rudolph W. Giuliani as mayor of New York City. Soon after, the relationship between the press corp and the NYPD deteriorated. According to a federal civil rights Complaint prepared in 1999 (hereinafter the "1999 Complaint"), the NYPD under Giuliani "consistently ignored the NYPD media guidelines and instead followed a policy, custom and practice of

interfering with media access to newsworthy events in public and private places." Pl.'s Ex. B at 9.

22. According to the 1999 Complaint, these "violations evidence a pattern of violations by the City which may be summarized in four broad categories:

> (a) First, in recent years, the NYPD has repeatedly interfered with press photographers and reporters ... by physically blocking camera lenses at the scene of newsworthy events, even when no threat to public safety exists and the press photographers and reporters are not interfering with the NYPD's law enforcement function in any way.
>
> (b) Second, the NYPD in recent years has also routinely interfered with photographers and reporters ... by segregating and confining them to poorly positioned 'press pens,' even when there has been no legitimate security or law enforcement reason for such pens. In many cases, these pens have been positioned so far away from the scene of the crime, fire, accident or demonstration as to deny press photographers and reporters access to the scene altogether.
>
> (c) Third, in many cases in recent years, press photographers and reporters ... have been unnecessarily confined to pens and/or other areas that were poorly positioned for covering the event in question, while civilians have been granted free access to the general area.
>
> (d) Fourth, in recent years the NYPD has further interfered with ... photographers and reporters' right to access by arbitrarily confiscating and/or threatening to confiscate press cards – which entitle the bearer to cross police and fire lines absent legitimate security concerns – without procedures for determining whether such confiscation is warranted, or if and when the press card is to be returned.

Pl.'s Ex. B at 11-2.

23. The 1999 Complaint detailed thirty-four instances of NYPD interference with professional news-gathering activity, in each of these four broad categories,

between 1996 and 1999. Pl.'s Ex. B at 13-33. Tellingly, thirty-two of the thirty-four instances of interference involved photojournalists, as opposed to writers.

24. Before the 1999 Complaint was filed, the NYPD entered into negotiations with the coalition of professional news-gathering organizations represented in the Complaint. Those negotiations resulted in the City of New York agreeing to take a number of positive, corrective actions "to ensure that access is provided to working members of the press to the fullest extent possible." Pl.'s Ex. H at 1.

25. Michael Bloomberg replaced Giuliani as Mayor of New York City on January 1, 2002. Bloomberg appointed Ray Kelly as Commissioner of the NYPD. At the time, journalist Leonard Levitt was a longtime columnist at *Newsday*, headquartered in Melville, Long Island. Levitt had written a number of articles critical of the NYPD, and Commissioner Kelly couldn't take it anymore. In 2003, Kelly actually rode out to *Newsday* headquarters, in his government-issued vehicle, with his government-issued security detail, to complain about Levitt's critical coverage of the NYPD. C. Kilgannon, "Permitted Behind Police Lines, but Not Welcome," *The New York Times*, Nov. 6, 2009.

26. *Newsday* stood by their man, and Levitt's critical coverage continued. Two years later, the NYPD posted Levitt's photograph at the entrance to Police Headquarters, and refused to allow him into the building – where journalists maintain offices known colloquially as "The Shack." Levitt had to retain legal assistance from the NYCLU to re-gain access to the building, and with it, the resources therein. In January 2006, the

NYPD again attempted to ban Levitt from Police Headquarters, again notwithstanding the fact that Levitt had a valid NYPD-issued press credential. Again, legal counsel from the NYCLU intervened on Levitt's behalf to ensure his access to the building. Then, in 1997, the NYPD refused to renew Leavitt's NYPD-issued press credential. Id.

27. In 2009, Defendant Bratton was asked about the NYPD's treatment of Levitt. At the time, Bratton had just retired as Commissioner of the Los Angeles Police Department. Before he went West, Bratton served as NYPD Commissioner, from 1994 to 1996. During that time, Bratton dealt with Levitt. Regarding Levitt, Bratton told *The New York Times* that: "He's been in the doghouse from time to time when I was there, but we called it a penalty box. We wouldn't talk to him for a while, but then we'd let him out. With the press, you can't control what they write, but you can try to influence it as best you can." Id.

28. In 2004, during the Republican National Convention, several high-ranking NYPD officers assaulted an NYPD-credentialed photojournalist for documenting police action during a protest. On assignment for *The New York Times*, Robert Stolarik was in Union Square documenting protests when a squad of white-shirted officers, indicating a rank of lieutenant and above, moved in to arrest a protester. Stolarik photographed the action, NYPD-credential visible on his person. One of the officers shoved him backward, and Stolarik was gang-tackled by other whit-shirted officers and beaten. He sued for damages, and the City of New York offered him a settlement, which he took.

29. In February 2010 four Bronx youths were having a snowball fight when an errant snowball accidentally hit a passerby. The passerby happened to be NYPD Sgt. Adonis Ramirez, then off-duty and in plain clothes. After getting hit with the snowball, Ramirez drew a fully-loaded handgun and arrested the four. *New York Daily News* reporter Kerry Burke was assigned to cover the story, and went to Sgt. Ramirez's Bronx apartment. A neighbor let Burke into the building where Ramirez lived. Ramirez was not home, but his wife was. Burke spoke with her briefly. Numerous police officers soon arrived at the scene. Burke identified himself as a journalist to the police. A lieutenant accused Burke of committing burglary. When video surveillance footage indicated a resident allowed Burke into the building, the police then accused Burke of impersonating a police officer.

30. The lieutenant ordered Burke to surrender his NYPD-issued press credential. Text on the back of all NYPD-issued press credentials states that (i) the credential is "the property of the New York City Police Department" and (ii) "may be taken away by competent authority at any time." Because of this text, Burke complied with the lieutenant's order and surrendered his NYPD-issued press credential.

31. Eventually, the police let Burke go, but they refused to return his NYPD-issued press credential. The lieutenant who took Burke's NYPD-issued press credential telephoned DCPI. According to the lieutenant, DCPI instructed him not to return the press credential to Burke. Instead, Burke was ordered to come into the DCPI office for a

meeting. A few weeks later, after the meeting, a DCPI official told Burke "we may or may not be in touch," or words to that effect. Seven months went by. *New York Daily News* editor Kevin Convey had a meeting at the Harvard Club with NYPD Commissioner Kelly. Over lunch, Convey brought up the taking of Burke's press credential. Soon after, DCPI Det. Brian Sessa came to Burke's desk in the Shack, placed an NYPD press credential on Burke's desk, said "Compliments of Commissioner Kelly," and left.

32. In 2010, NYPD-credential photojournalist John Taggart was on assignment for the *New York Daily News* in Brooklyn. He responded to a call of a hit-and-run accident. An SUV had struck a pedestrian and fled the scene. When Taggart began taking pictures of paramedics attending to the injured pedestrian, an NYPD officer grabbed him from behind, threw him against a vehicle and put him in handcuffs. The police officer informed Taggart that if he did not tell him how to delete the photographs he had just taken with his digital camera he would be taken to jail. The police officer was angry that Taggart had photographed an injured person being put in an ambulance. The police officer demanded that Taggart instruct him how to delete the images. Under the police officer's threat to take Taggart to jail, Taggart told the police officer how to delete the photographs he had taken. The police officer then deleted the photographs from Taggart's camera. The police officer wrote Taggart a summons for disorderly conduct, and released him. Later, Taggart agreed to settle a lawsuit against the City.

33. On November 14, 2011, the NYPD initiated an operation to clear Zuccotti Park of encamped Occupy Wall Street protesters. As part of the operation, hundreds of NYPD officers established a security perimeter several blocks away from the park, from behind which no view of police activity inside the public park was observable, either by sight or sound. Scores of NYPD-credentialed journalists learned of the operation and arrived at the scene, attempting to get to Zuccotti Park and witness the official action. None of them were allowed through the police lines, notwithstanding that they were properly credentialed. In addition, upon information and belief, NYPD helicopters closed the airspace above the park, preventing news helicopters from performing aerial news-gathering.

34. Plaintiff and a handful of NYPD-credentialed news-gatherers learned, in advance, of the planned police action, and were already inside Zuccotti Park when the police operation to clear the park of protesters and their tents began. When police first advanced into the park, the first tent they cleared was the extra-large "media tent," being used as a base of operation by Occupiers engaged in non-professional, citizen news-gathering. Pl.'s Ex. I. Moments later, an NYPD officer ordered all NYPD-credentialed news-gatherers inside the park to assemble, then he ordered them to leave the park.

35. At the time of the police operation to clear Zuccotti Park, Paul Browne was the NYPD's Deputy Commissioner for Public Information – the position held by Defendant Davis in this action. During the police operation to clear the park, Browne

himself personally entered the park and seized NYPD-credentialed reporter Kerry Burke, of the *New York Daily News*. Browne then ejected Burke from the park, personally escorting him to a press pen that had, by then, been set up across the street from the park. Pl.'s Ex. J. At the same time Browne was ejecting Burke from the park, another DCPI officer was ejecting the NYPD-credentialed photojournalist who had been working with Burke, Pearl Gabel. Id.

36. Meanwhile, on the street near Zuccotti Park, police arrested NYPD-credentialed reporter Patrick Hedlund. A photograph of Hedlund's arrest shows his NYPD-issued press credential in plain view, hanging from his neck. Pl.'s Ex. K. A journalist for National Public Radio, Julie Walker, was also arrested. Pl.'s Ex. L. A photograph of Walker's arrest, like Hedlund's, shows her NYPD-issued press credential in plain view, hanging from her neck. Id. Other journalists attempting to get to Zuccotti Park were assaulted by members of the NYPD. NY1 reporter Lindsey Christ reported seeing "Reporters/photogs being thrown to the ground and pushed to wall if they get in front of the wrong officer." Brian Stetler, of *The New York Times*, reported seeing a *New York Post* reporter put in a choke-hold.

37. A month later, when O.W.S protesters attempted to occupy a new space at Duarte Square in Manhattan, the NYPD arrested Associated Press reporter Karen Mathews, Associated Press photographer Seth Wenig, *New York Daily News* reporter Mathew Lysiak and photojournalist Paul Lomax, of DNAinfo.com. Mathews, Wenig,

Lysiak and Lomax all possessed NYPD-issued press credentials, that they were wearing in plain view when they were arrested. See, e.g., Pl.'s Ex. M. Notably, Lt. Daniel Albano, a member of the NYPD's Legal Affairs Bureau, witnessed Wenig's arrest, and was standing directly beside Wenig when he was being arrested, yet took no action to prevent it. Id.

38. Lysiak's arrest was personally ordered by Joseph Esposito, who was at the time Chief-of-Department of the NYPD. Chief-of-Department is second in command of the NYPD. Within the NYPD, only the Police Commissioner is higher in rank than Chief-of-Department. Lysiak was a reporter, documenting events by recording video of police action with his smart-phone when Chief Esposito ordered him arrested: "You're under arrest. Put the phone away. Put your hands behind your back. Everybody else under arrest here." Pl.'s Ex. N (https://www.youtube.com/watch?v=4xBBi_5cQuA).

39. On November 30, 2011, while covering the rescue of a man who attempted to commit suicide by jumping in front of a PATH subway train at 23d Street and Sixth Avenues, members of the Port Authority Police Department interfered with Plaintiff's news-gathering by physically blocking his camera lens. Pl.'s Ex. O. When Plaintiff refused to comply with unlawful police orders to cease taking photographs in a public place, a Port Authority police sergeant punched him the chest and arrested him. Plaintiff was charged with "obstruction," in violation of N.Y. Penal Law § 195.05 – precisely the police conduct proscribed by the Consent Decree in Black v. Codd. Pl.'s Ex. G. The

Manhattan District Attorney's office refused to dismiss the charge. Plaintiff invoked his right to a jury trial. That trial ended in a hung jury. Again, the Manhattan District Attorney's office refused to dismiss the charge. After a second jury trial, Plaintiff was acquitted.

40. On August 4, 2012, Robert Stolarik was on assignment for *The New York Times*, paired with a reporter and tasked with reporting on the NYPD's "stop-and-frisk" program, then just beginning to come under serious scrutiny. While observing police respond to a dispute among Bronx teenagers, NYPD officer Michael Ackerman shoved the camera Stolarik was using into his face. When Stolarik asked for the officer's name and badge number, Ackerman and another officer seized Stolarik, threw him to the ground, and arrested him. His photographic equipment was damaged, and his NYPD-issued press credential was also taken from him. Subsequently, the charges against Stolarik were dropped, and Ackerman was charged with, and convicted of, falsifying documents to justify the wrongful arrest. It was months before the NYPD returned Stolarik's press credential to him, and then only because of vigorous advocacy from *The New York Times*' legal department.

41. On September 17, 2012, during peaceful protests celebrating the first anniversary of the birth of the Occupy Wall Street protest movement, members of the NYPD "interfered with, assaulted, detained and in some cases arrested members of the media who were on a public street," according to a letter from the *National Press*

Photographers Association to the NYPD. According to the letter, an NYPD lieutenant "repeatedly told journalists, including many with NYPD credentials," they could not be on a public street. The lieutenant was also heard "telling a group of reporters and photographers, including several with NYPD-credentials, that they could not continue to use cameras in a public area. Officers then used batons to shove groups of credentialed journalists north on Broadway and also threatened another group of credentialed journalists with arrest if they did not leave the sidewalk on the west side of Broadway. This occurred at the same time police allowed members of the public access to that area." Pl.'s Ex. P.

42. On May 16, 2014, a robbery suspect was shot and killed by police in Manhattan. Robert Stolarik was assigned to cover the event by *The New York Times*. The NYPD established a crime scene in the immediate area around the shooting that excluded all but essential NYPD investigators. Stolarik was outside the crime scene, in an area where other NYPD-credentialed journalists, as well as members of the public, were allowed to be. Enter Lt. Eugene Whyte of DCPI. Lt. Whyte ordered Stolarik to put down his camera and leave the area. Pl.'s Ex. Q. Video of the incident shows Stolarik to be standing outside the crime scene, in a public place; it also shows an NYPD-credentialed journalist to be closer to the crime scene than Stolarik was, when Lt. Whyte ordered him to put down his camera and leave the area. Id.

43. On July 31, 2014, a man was killed by a subway train at the Broadway-LaFayette subway station in Manhattan. Plaintiff was on the subway platform taking photographs when an NYPD officer blocked his camera, and ordered Plaintiff to leave. When Plaintiff displayed his NYPD-issued press credential, the NYPD officer said "I don't care if you're press. Upstairs. Upstairs. Upstairs. Upstairs. Sir – you wanna get arrested? I will lock you up. Upstairs. Now. Let's go. Have some respect." Pl.'s Ex. R (https://www.youtube.com/watch?v=wBayxiYxyQw). A police supervisor wearing a white-shirt was standing nearby when the police officer said this (at: 15). The police supervisor witnessed the officer's improper action, yet ignored it. Id. The police officer, emboldened by his supervisor's implicit approval of his action, then began pushing Plaintiff backward, away from the scene. Members of the public were allowed to stay in the same area on the subway-station platform as Plaintiff was physically ejected from.

44. On September 17, 2014, NYPD-credentialed photojournalist Sam Costanza was photographing an arrest occurring on the corner of Park Avenue and E.93d Street. NYPD officers Lt. Bracero and Sgt. Romance interfered with and attempted to prevent Costanza from photographing and reporting on their treatment of the arrestee. Lt. Bracero and Sgt. Romance repeatedly ordered Costanza to move away from the scene and stop taking photographs. They pointed at Costanza and threatened to arrest him if he did not comply. Pl.'s Ex. S.

45. In December 2014, Andrew Gombert, a staff photographer for the European Pressphoto Agency, was documenting the scene of a Black Lives Matter movement protest when a police officer ordered him to leave the area. Upon information and belief, when Gombert asserted his right as a NYPD-credentialed journalist to remain in the area, police officers knocked him to the ground and arrested him. Pl.s Ex. T. Police also seized his NYPD-issued press credential. Gombert's credential was not returned to him for several months.

46. It was not the first time Gombert's news-gathering activity was interfered with by members of the NYPD. On November 17, 2011, during an Occupy Wall Street protest, he was also intentionally knocked to the ground by NYPD officers, even though his NYPD-issued press credential was clearly visible hanging from a lanyard secured to his neck. Pl.'s Ex. U.

47. On March 11, 2016, Reuters' staff photographer Brendan McDermid was photographing sign-related imagery adjacent to a subway entrance in Times Square, when a female NYPD officer accused him of shooting "up-skirt" photographs of women leaving the subway. His NYPD-issued press credential was plainly visible, hanging from his neck. The police officer threatened to arrested McDermid if he did not leave the area. She summoned five other NYPD officers who surrounded him and threatened to arrest him if he did not leave. Soon after, one of the officers placed a metal police

barricade in such a way as to make it impossible for McDermid to photograph the signage, and he therefore left.

48. A week later, on March 19, 2016, McDermid was covering an anti-Trump protest in Manhattan. McDermid witnessed a young protester holding an anti-Trump sign on the curtilage adjacent to the Trump International Hotel and residence at Columbus Circle. As he was taking photographs of the protester, an NYPD officer invaded his personal space, pressed his chest up against McDermid's, and began driving McDermid backwards while repeating "Why are you pushing me? Why are you pushing me?," though it was the officer who was pushing McDermid. McDermid's NYPD-issued press credential hung in plain view from a lanyard around his neck. When McDermid protested, the officer called for back-up, and told McDermid he would be arrested if he did not leave. At that point, the protester himself left, so McDermid left, too.

49. More examples of NYPD members interfering directly or indirectly with news-gathering activities by NYPD-credentialed news-gatherers exist. However, many NYPD-credentialed news-gatherers are afraid to come forward and speak on the record about instances of NYPD interference with their news-gathering activity. For instance, one professional journalist was explicitly warned against creating a record or contemporaneous document of police interference with his news-gathering,. Another journalist was explicitly warned against contacting Norman Siegal, a noted civil rights lawyer who has previously sued the NYPD – by Lt. Whyte.

50. Non-credentialed citizen news-gathers are also subjected to interference and arrest for engaging in lawful news-gathering activity. For example, on May 19, 2016, NYPD officer Risel Martinez drew his handgun and pointed it at on-lookers witnessing and video-recording an arrest Martinez and his partner were making. Pl.'s Ex. V (https://www.youtube.com/watch?v=77CfEJBMwok). During the arrest, Martinez appeared to be using a choke-hold banned by NYPD regulations on the arrestee. Id.; NYPD Patrol Guide Procedure No. 203-11 ("Members of the New York City Police Department will NOT use chokeholds. A chokehold shall include, but is not limited to, any pressure to the throat or windpipe, which may prevent or hinder breathing or reduce intake of air."). Just before police officer Martinez drew his handgun and ordered on-lookers to leave, the person Martinez was arresting said "I can't breathe" – the last words of Eric Garner, who was choked to death by NYPD officers, using a banned choke-hold. A short time later, police officer Martinez punched and arrested one of the on-lookers simply because he was video-recording Martinez. A white-shirted NYPD officer assisted in the arrest of the on-looker.

51. The police action detailed in paragraph 50 appears, on its face, to violate the consent decree in Black v. Codd, as well as NYPD regulations banning the use of all chokeholds. Yet, instead of condemning the wrongful police action, Defendant Bratton used the opportunity – when asked about the episode during a press conference – to criticize what he described as an "epidemic" of citizen news-gathering. R.

Parascandola, NYPD "Commissioner Bill Bratton criticizes 'epidemic' of citizens recording arrests amid backlash over Harlem cop caught punching man who filmed him," *New York Daily News*, May 25, 2016. "This has become very serious. I would almost describe it as an epidemic in this country." Id. Therefore, Defendant Bratton approves of, condones and encourages an unwritten policy, custom and practice of interfering with constitutionally-protected news-gathering activity.

The Unwritten NYPD Policy and Practice to Suppress, Shape and Abridge News-Gathering, As Applied to Plaintiff

52. In 2006 Plaintiff began earning a living as freelance photojournalist. The following year, he applied for and was issued a press credential by the NYPD.

53. An NYPD-issued press credential is the functional equivalent of a professional license, particularly for the photojournalist.

54. In order to gain meaningful access to various venues in which much of the news for New York City is generated an NYPD-issued press credential is required for photojournalists, even by agencies and officers not under the control of the NYPD. For example, in order to bring cameras into the state and city courthouses in New York City, state court officers enforce a policy requiring the presentation of an NYPD-issued press credential.

55. In order for any journalist, not just a photojournalist with a camera, to gain entry to press conferences and other events held at Police Headquarters, the Manhattan District Attorney's office, City Hall, MTA headquarters, and the Office of the United

States Attorney for the Southern District of New York, among others, all require the presentation of an NYPD-issued press credential.

56. Similarly, possession of an NYPD-issued press credential is necessary to cover crime and fire scenes, parades and other special events, such as events attended by visiting dignitaries, as only a person bearing an NYPD-issued press credential is allowed to cross police security perimeters that are typically established around such events.

57. In light of the facts set forth above, in paragraphs 53-56, most if not all all of the editors responsible for assigning journalists to cover events in New York City consider the possession of an NYPD-issued press credential to be a necessary pre-requisite for employment, either as a writing or photographing journalist.

58. In September 2014 Plaintiff possessed a valid, NYPD-issued press credential.

59. On September 17, 2014, Plaintiff was on assignment for the *New York Daily News*. His job that day was to obtain a picture of Roger Goddell, the Commissioner of the National Football League. While carrying out his assignment, Plaintiff was attacked and assaulted by Goodell's bodyguard, Thomas Crowe, a retired NYPD detective. Crowe intentionally hit Plaintiff with the SUV he was driving, then jumped out, yelled that he was a police officer, and proceeded to strike and choke Plaintiff, in the middle of Park Avenue. One witness called 9-1-1 and said: "He's going to kill him. And right now the guy in the suit is hitting him. Oh my God, he's going to

kill him. No weapons, with his hands, he's strangling him." Pl.'s Ex. W at 1. When the NYPD arrived, however, they arrested Plaintiff, and charged him with assaulting Crowe. After an investigation by the Manhattan District Attorney's office, the charges against Plaintiff were dismissed. No charges were ever brought against Crowe, despite Plaintiff's repeated requests.

60. Upon information and belief, as a result of Plaintiff's September 17, 2014, arrest, DCPI Lt. Eugene Whyte went to the police precinct were Plaintiff was being held pending arraignment. Whyte seized Plaintiff's NYPD-issued press credential. Pl.'s Ex. X. No process of law accompanied the revocation of Plaintiff's press credential. Plaintiff went without his NYPD-issued press credential for four months before the District Attorney dismissed the charges against Plaintiff. After the charges were dismissed, DeBonis re-issued Plaintiff NYPD press credentials.

61. On January 4, 2015, a funeral was held for slain NYPD officer Wenjian Liu. Across the street from the funeral home, a sidewalk was open to the public. However, when Plaintiff, bearing an NYPD-issued press credential, attempted to stop on the sidewalk and take a picture, NYPD officers objected to his presence and ordered him to get into what they referred to as a "press pen," located about 150 yards away. A "press pen" is typically an area off the sidewalk surrounded by metal barricades. When Plaintiff refused, and pointed out that the sidewalk was open to members of the public, Defendant Whyte arrived. On the spot, Whyte declared the sidewalk to be a so-called

"floating" frozen zone, which allowed civilians to walk along the sidewalk, but prevented NYPD-credentialed journalists from being there. When Plaintiff attempted to film Whyte issuing this order, he ordered Plaintiff to stop, and ordered Plaintiff to surrender his NYPD-issued press credential. Plainitff complied with Whyte's order. The credential was returned, by Defendant DeBonis, later that day.

62. On October 30, 2015, Plaintiff was on assignment for the *New York Daily News* as a photojournalist. That morning, Plaintiff was assigned to cover an event at City Hall. After the event, two construction workers became trapped in a partial building collapse in mid-town Manhattan, approximately in the middle of the 38th Street, between 5th and 6th Avenues. Plaintiff's employer directed him to go to the scene and capture images of official efforts to rescue the trapped men.

63. When Plaintiff arrived one of the men had already been brought out, dead.

64. Efforts were underway to free the second worker, who was alive but trapped.

65. The rescue effort itself could not be seen from the street, as the partial collapse had occurred in the rear of the building. Plaintiff waited on the sidewalk next to the building for visible, news-worthy activity to occur. As Plaintiff waited, his NYPD-issued press credential plainly visible, a man in a suit appeared and ordered Plaintiff to leave. Plaintiff asked the man in the suit to identify himself. The man in the suit refused to identify himself, but persisted in his demand that Plaintiff leave. In order

to avoid a confrontation, Plaintiff entered an adjacent store. Workers in the store allowed Plaintiff to be there. The man in the suit left. Plaintiff waited inside the store for the second trapped worker to be freed and brought out.

66. As Plaintiff waited inside the store, personnel from DCPI arrived on the scene, including Defendants DeBonis and Davis. Defendants Davis and DeBonis rounded up all of the NYPD-credentialed journalists who had been on the public street where rescue operations were taking place, and corralled them into a "press pen."

67. The "press pen" was constructed with inter-locking metal barricades. Defendants ordered news-gatherers to stay inside the "press pen."

68. The "press pen" was located at the corner of 5th Avenue and 38th Street, far away from the scene of actual rescue operations. News-gatherers in the "press pen" were not able to see, hear or photograph actual rescue operations at the scene.

69. Defendants' action restricting NYPD-credentialed news-gatherers to a "press pen," out of sight and hearing of rescue operations, was not authorized by NYPD regulations.

70. NYPD regulations do not authorize the use of "press pens." Pl.'s Ex. F.

71. NYPD regulations require that NYPD-credentialed news-gatherers be allowed within sight and sound of the event or activity they are seeking to report on. Pl.'s Ex. F at 2 ("The media will be given access as close as possible, with a clear line of sight and within hearing range of the incident.").

72. NYPD regulations also require that "*Members of the service will not interfere with the video taping or the photographing of incidents in public places. Intentional interference such as blocking or obstructing cameras or harassing the photographer constitutes censorship. Working Press Cards clearly state the bearer "is entitled to cross police and fire lines." This right will be honored and access will not be denied.*" Pl.'s Ex. F at 2 (emphasis in original).

73. NYPD regulations do state that news-gatherers may permissibly be denied access to "*areas frozen for security reasons.*" Pl.'s Ex. F at 2. The reasons for creating security "frozen zones" typically include high-level dignitary protection, such as visits by heads of state; so-called "suspicious devices," that is, things suspected of possibly being bombs; and active-shooter scenes, where the shooter has yet to be killed or captured.

74. True security frozen zones, that exclude NYPD-credentialed news-gatherers, are not typically created for ordinary crime and fire scenes.

75. NYPD regulations govern police conduct at "fire scenes." Pl.'s Ex. Y (NYPD Patrol Guide Procedure No. 212-58, "FIRE"). The types of emergency scenes governed by NYPD Patrol Guide Procedure No. 212-58 are not limited to the scenes of actual fires, but include accidents, building collapses and other catastrophes where the FDNY has operational control and command. Unlike the NYPD, the FDNY has a specialized unit for handling building collapses.

76. Upon information and belief, the FDNY had operational control and command at the construction accident on 38th street on October 30, 2015.

77. Upon information and belief, the construction accident on 38th street on October 30, 2015 was a "fire scene" under NYPD regulations.

78. NYPD regulations governing "fire scenes" do not authorize the creation of security "frozen zones" that exclude NYPD-credentialed news-gatherers. PL.'s Ex. Z at 1. To the contrary, NYPD regulations explicitly require that NYPD-credentialed news-gatherers be allowed to cross police and fire lines at fire scenes. Id. at 1 ("9. Permit only the following persons or vehicles to enter fire lines: ... d. Persons holding unexpired: (1) Working Press cards ").

79. Defendant Davis's and DeBonis's restriction of news-gatherers to the "press pen" described in paragraphs 66 through 69, out of sight and hearing of news-worthy activity taking place on a public street, was not narrowly tailored to serve a compelling and content-neutral governmental interest; nor was it rationally related to any legitimate and content-neutral state interest.

80. Upon information and belief, Defendants did not believe the second trapped worker the FDNY was attempting to free could be saved, and believed the second worker would be dead by the time he could be freed and brought out.

81. Upon information and belief, Defendants and other officials did not want news-gatherers to document a failed rescue attempt.

82. Upon information and belief, Defendants and other officials did not want imagery created of a dead worker being brought out.

83. Upon information and belief, Defendant Davis's and DeBonis's restriction of news-gatherers to the "press pen" described in paragraphs 66 through 69 was a content-based, prior restraint on news-gathering intended to prevent the creation of imagery of a dead or injured victim. In other words, it was pre-emptive censorship.

84. On October 30, 2015, as Plaintiff waited inside the store for first responders to free the second trapped construction worker, Plaintiff observed numerous photographers outside the store, in the middle of the scene, taking pictures. There were photographers from the Fire Department, the Police Department, the Buildings Department, the Office of Emergency Management and Consolidated Edison, a utility provider.

85. In addition, the NYPD allowed commerce to continue on 38th Street during rescue operations. Stores and other commercial establishments on 38th Street were allowed to remain open during rescue operations.

86. Members of the public were allowed to enter and exit the commercial establishments detailed in paragraph 85, and were allowed to walk on the sidewalk on the side of the street opposite the damaged building. Some of these passersby occasionally stopped to take photographs and video with cell-phones, smart-phones and cameras.

87. NYPD regulations governing news-gatherers' access to areas under police control explicitly state that "*A member of the press with proper credentials may not be excluded from an area where the general public has access.*" Pl.'s Ex. F at 1 (NYPD Patrol Guide Procedure No. 212-49)(emphasis in original).

88. Finally, two NYPD-credentialed photojournalists were not in the "press pen" Defendants established, but were situated within a commercial establishment, behind police lines, opposite the damaged building. Their names were Brendan McDermid, of *Reuters*, and William Farrington, of the *New York Post*.

89. Defendants DeBonis and Davis were aware of the presence of these two NYPD-credential photojournalists, McDermid and Farrington, behind police lines, outside of the press pen, yet neither DeBonis nor Davis took action took action to have either McDermid nor Farrington placed in the press pen.

90. Defendants DeBonis and Davis were aware of the presence of these two NYPD-credential photojournalists, McDermid and Farrington, behind police lines, outside of the press pen, yet did not take their NYPD-issued press credentials from them.

91. Finally, the trapped construction worker was freed. He was extracted from the building, placed on a stretcher, and rolled toward a waiting ambulance. Plaintiff exited the store he was in, and stepped out onto the street to document events. Plaintiff's NYPD-issued press credential was in plain sight, clearly observable on his

person. Plaintiff walked approximately 150 feet through a scene filled with police, firefighters and paramedics and not one questioned or challenged his right to be present.

92. Plaintiff walked unimpeded or challenged from the store he had been in to the side of the waiting ambulance.

93. Plaintiff stood behind emergency workers, totally out of their way. Plaintiff maintained a distance standard among professional photojournalists documenting a breaking-news scene: close enough to create news-worthy imagery – in this case to see the subject of the rescue effort, the construction worker – but not so close as to interfere with personnel performing rescue operations.

94. Plaintiff raised his camera to make still images and video of the rescued construction worker being put into an ambulance. Immediately, Defendant DeBonis physically seized Plaintiff.

95. DeBonis pulled Plaintiff away from the scene, abridging Plaintiff's news-gathering. As he did so, Defendant DeBonis said "What are you doing? What are you doing? You're not allowed behind this press line."

96. NYPD regulations do not authorize the creation and enforcement of a so-called "press line." In fact, the concept of a "press line" – a police-enforced perimeter that targets and excludes news-gatherers, and only news-gatherers – is explicitly disallowed by NYPD regulations. See Pl.'s Ex. F at 1-2 & Pl.'s Ex. Y at 2.

97. Defendant Davis was present. Davis witnessed the events described above, in paragraphs 91 to 95.

98. As DeBonis was leading Plaintiff away from the scene, Davis approached and said to Plaintiff: "This is the last time you'll do that." Pl.'s Ex. Z (https://www.youtube.com/watch?v=YufmrmfDjN4)

99. When Plaintiff asked what Davis meant, Davis responded "You know what I mean. Everyone else is over there working with us. We work with you all the time. Don't bullshit me!" He then ordered DeBonis to "hold on" to Plaintiff's press credential, and to "talk to me before you think of giving it back. Me personally." When Plaintiff attempted to further engage Davis, he ordered Plaintiff to leave the scene: "Get out of here. Get out of here. Team player." Id.

100. DeBonis ordered Plaintiff to surrender his press credential to him. Because of language on his NYPD-issued credential stating that it is the NYPD's property, as detailed in paragraph 30, Plaintiff complied with DeBonis's order and surrendered his NYPD-issued press credential to DeBonis. Defendant DeBonis escorted Plaintiff to the corner where a police line had been established and ejected Plaintiff from the scene.

101. As DeBonis was leading Plaintiff away from the scene, DeBonis said to Plaintiff that the rescued worker was probably going to die, "so, you know, if you want to use that …," or words to that effect.

102. To Plaintiff, the clear import of DeBonis's message was that Plaintiff should not have captured images of the victim, and that it would be an additional wrong to disseminate whatever imagery Plaintiff captured.

103. As Plaintiff was being lead to the corner by DeBonis, some NYPD-credentialed news-gathers in the "press pen" recorded the encounter. After DeBonis ejected Plaintiff from the scene, he went over to the press pen and said, in a loud voice, "Tell your boys in the Press Photographers association he's never getting another press card," in substance, referring to the New York Press Photographer's Association.

104. Plaintiff was told that DeBonis also stated that the reason Plaintiff's NYPD-issued press credential was revoked was because he allegedly "jumped on the back of the ambulance."

105. Upon information and belief, the City-employed photographers referred to in paragraph 84 were charged, in part, with creating imagery for public distribution via city-controlled social media internet websites. These included photographers for the Police Department, the Fire Department, the Buildings Department and the Office of Emergency Management. Upon information and belief, none of the images released for public distribution by these photographers or city-controlled websites depicted images of the victims of the construction accident on 38th Street on October 30, 2015, though they released other images showing the general rescue effort.

106. The *New York Daily News* published Plaintiff's still images and video from the event. The published pictures and video included imagery of one of the victims.

107. Plaintiff sent several emails to DeBonis seeking the return of his NYPD-issued press credential.

108. Because DeBonis told Plaintiff's colleagues that the reason why his NYPD-issued press credential had been revoked was because he allegedly jumped on the back of the ambulance, Plaintiff sent emails with photographic and video evidence to DeBonis refuting this assertion.

109. First, Plaintiff sent an email to DeBonis at 3:56 PM on October 30 showing that the *New York Daily News* used the imagery he created that day, thus establishing that Plaintiff was engaged in *bona fide* professional news-gathering.

110. Second, Plaintiff sent an email to DeBonis at 5:22 on October 30 with a video documenting Plaintiff's activity, establishing that he was not warned or otherwise told he could not be where he was, and establishing that he did not jump on the back of the ambulance, or otherwise interfere with rescue personnel.

111. Third, Plaintiff sent an email to DeBonis at 6:26 PM on October 30, with images showing that he was behind rescue personnel, raising his camera high in the air to shoot over rescue personnel, rather than risk interfering with them.

112. Finally, at 10:00 PM on October 30 Plaintiff sent DeBonis another email with more images showing that he had not come close to interfering with rescue personnel.

113. In response, DeBonis sent an email to Plaintiff at 10:30 PM on October 30. The message of the email was two words: "FROZEN ZONE."

114. Fourth, the next day, at 8:18 AM, Plaintiff sent an email to Defendant DeBonis explicitly requesting an opportunity to be heard regarding the taking of his press credential: "I am, of course, available, should it be convenient for you and the Deputy Commissioner to discuss this further and allow me to apologize in person and discuss how important my work is, and how valuable your work is to my work."

115. Finally, on December 1, 2015, before initiating the instant action, Plaintiff sent one last email to DeBonis again requesting an opportunity to be heard regarding the taking of his press credential: "can i come in and talk about my press card?"

116. Despite Plaintiff's numerous emails to DeBonis contesting the taking of his press credential, and two explicit requests for an opportunity to be heard regarding the taking of his press credential, Defendants did not provide Plaintiff an opportunity to be heard regarding the taking of his press credential until May 19, 2016.

117. DeBonis's reference to "frozen zone" in his October 30 email to Plaintiff, at 10:30 PM in the evening, hours after the taking of Plaintiff's press credential, presumably relates to the rescue scene on 38th Street earlier that day.

118. Plaintiff was never advised, or in any way made aware, that a "frozen zone" was created at the scene on 38th street, before Defendants took Plaintiff's NYPD-issued press credential.

119. No true content-neutral security frozen zone was created at the scene on 38th street. Defendants' assertion that a frozen zone was created on 38th street was and is a post-hoc pretext intended to provide legal cover for extra-legal and unconstitutional censorship of Plaintiff's news-gathering activity.

120. If, in fact, a true content-neutral security frozen zone was created on 38th Street, no one informed Plaintiff of that fact, before the taking of his NYPD-issued press credential; nor did anyone inform Plaintiff, before the taking of his press credential, that his presence in the alleged frozen zone was not authorized.

121. Plaintiff's NYPD-issued press credential explicitly authorized him to cross police and fire lines.

122. The NYPD-issued press credential Plaintiff possessed on October 30, 2015, itself explicitly states in writing on the press credential that its bearer is "is **entitled** to cross police, fire lines and other restrictions."

123. A document DeBonis made Plaintiff sign, on two separate occasions, when DeBonis issued Plaintiff a press credential, says explicitly that "I understand that the Press Card holder 'is entitled to cross police and fire lines.'"

124. The City Law authorizing and requiring the NYPD to issue press credentials explicitly recognizes that the types of news-worthy events NYPD-credentialed news-gathers may gain access to include violent and chaotic ones, where lives often hang in the balance, such as "crime scenes, fires, train wrecks, bombings, and plane crashes." Tit. 38 R.C.N.Y. § 11-01 (e).

125. At no time did Defendants ever advise Plaintiff that he had to a right to demand a hearing in the event of the taking of his NYPD-issued press credential, pursuant to Section 11-11 of Title 38 of the Rules of the City of New York.

126. On May 12, 2016 Plaintiff learned, for the first time, at oral argument during proceedings related this lawsuit, that the taking of his NYPD-issued press credential was temporary, not permanent, and that he therefore had the right to demand a hearing from Defendants pursuant to Section 11-11 of Title 38 of the Rules of the City of New York.

127. On May 13, 2016, Plaintiff sent an email demanding a hearing to Defendants Davis and DeBonis, pursuant to Section 11-11 of Title 38 of the Rules of the City of New York.

128. On May 19, 2016, Edward Mullen, DCPI's Commanding Officer, and Lt. Whyte conducted a proceeding concerning the taking of Plaintiff's press credential by DeBonis and Davis on October 30, 2015.

129. Neither Mullen nor Whyte were fair and impartial decision-makers. Both Mullen and Whyte are under the command of the officer who made the initial decision to take Plaintiff's press credential – Defendant Davis. Davis is a Deputy Commissioner. Mullen is a Deputy Chief, and Whyte is a Lieutenant – both inferior in rank to Deputy Commissioner – the rank Defendant Davis holds.

130. Being under the command of the officer who made the decision presented for review necessarily compromises a lower-ranking officer's ability to be a fair and impartial decision-maker. Therefore, because Davis made the decision to revoke Plaintiff's press credential, and Mullen and Whtye were inferior in rank to Davis, and in fact are under his direct chain-of-command, they were unable to be fair and impartial in this case.

131. Second, the proceeding afforded Plaintiff was less than fair and impartial because a member of the NYPD without an authorized role was not only present during the proceeding, but was an active, biased and overtly hostile participant in the decision-making process. The applicable regulations state that the DCPI Commanding Officer shall be the sole Hearing Officer. 38 RCNY 11-11(e). No provision is made for the participation of any other officer or person in the hearing process.

132. Seated beside Hearing Officer Mullen in this case, however, throughout the proceeding, was Lt. Whyte.

133. Whyte is Defendant Davis's assistant and enforcer. Whyte ensures that the unwritten NYPD policy and practice to suppress, abridge and shape news-gathering is followed by other police officers, both within and without DCPI. Typically, Whyte personally attends to and resolves incidents involving confrontations between NYPD-credentialed news-gatherers and members of the NYPD.

134. Whtye has, from time-to-time, summarily seized news-gatherers' NYPD-issued press credentials, without any process of law whatsoever, including Plaintiff's and Robert Stolarik's, among others.

135. Whtye is a defendant in Stolarik v. Ackerman, SDNY, No. 15-Civ.-5858, where he is accused of retaliating against NYPD-credentialed photojournalist Robert Stolarik for engaging in constitutionally-protected activity. Among other adverse retaliatory actions, Whyte is alleged to have abridged Stolarik's access to a crime scene. Stolarik's lawsuit has survived a motion to dismiss.

136. Though Whyte's presence and participation at Plaintiff's 11-11 hearing was not authorized, there can be no reasonable doubt as to Whyte's active role in the proceeding: when Defendant Whyte stepped out of the hearing room, Hearing Officer Mullen halted the proceeding specifically to allow for his return.

137. When Plaintiff's second witness finished testifying, Whyte again demonstrated his active role in the proceeding by taking the reins of the proceeding, by

asking Plaintiff if had another witness to call, and opining on the admissibility of a video Plaintiff wanted to submit as evidence.

138. Besides improperly joining the proceeding, Whyte attempted to dissuade one of Plaintiff's witnesses from testifying by criticizing his decision to appear. In addition to sitting beside the Hearing Officer Mullen, Whyte escorted Plaintiff's witnesses into and out of the hearing room. As he was escorting Plaintiff's second witness, Dennis Van Tine, to the hearing room, Whyte stated to Van Tine: "Shouldn't you be on Madison Avenue waiting for someone to come out of a bar or something?"

139. Then, during Van Tine's testimony, Whyte initiated a line of inquiry intended to question the witness's credibility.

140. Plaintiff was denied the opportunity to confront and address adverse evidence that Hearing Officer Mullen considered.

141. The night before the proceeding, Lisa Bland, Special Counsel to DCPI, informed Plaintiff via e-mail that at the proceeding "the department will present any documentary evidence that it deems relevant to the issue of reinstatement of the press pass."

142. In response, Plaintiff asked for the opportunity to review any adverse evidence the Hearing Officer would be considering. Bland, at that point, advised Plaintiff in an e-mail that "This is not an adversarial proceeding. You will have the opportunity to present evidence regarding the summary suspension of your press

credential. If the department present any documentary evidence, it would not be anything that you weren't previously aware of."

143. During the proceeding, neither DeBonis nor Davis appeared as a witness.

144. No report, statement or document was presented or read into the record from DeBonis or Davis, or containing information from DeBonis or Davis.

145. Based on paragraphs 142, 143 and 144, the presentation of adverse evidence occurred outside of the proceeding where Plaintiff was present, and Plaintiff was not afforded an opportunity to examine and challenge it.

146. At the end of the proceeding, Plaintiff asked Hearing Officer Mullen whether there was other evidence or information that had been considered or would be considered that had not been presented during the proceeding. Before Hearing Officer Mullen answered, Whyte interrupted and said: "This is a hearing where you present to us."

147. Lastly, at no point during the proceeding was Plaintiff ever advised of a specific rule or expectation of conduct that he allegedly violated. The proceeding was initiated by Hearing Officer Mullen saying: "The floor is yours you can tell us what happened that day."

148. NYPD regulations allow Defendants forty-five days to render a decision after a Section 11-11 hearing is completed.

149. On June 21, 2016, Defendant Whyte sent Plaintiff an email stating: "Jason, At you convenience can you call me at the office so we may discuss your hearing. Thanks."

150. Plaintiff called the number Whyte provided to call him, twice, and sent him two emails. Yet, Whyte was not available when Plaintiff called the provided number, and did not respond to his emails.

151. On June 23, 2016, during a status conference on this lawsuit, Plaintiff learned, for the first time, that Defendants decided to return Plaintiff's press credential. According to Defendants' counsel, Mark Zuckerman, the NYPD "decided to return" Plaintiff's press credential. No reason was stated for this decision.

152. The procedures for taking NYPD-issued press credentials from journalists wholly lack the substantive and procedural safeguards required by the Due Process Clause for depriving professional journalists of their federally protected liberty and property interests in the continued possession of their NYPD-issued press credentials. In short, Plaintiff would have been afforded a fairer hearing were he an inmate accused of an infraction of prison rules – New York State prisoners facing solitary confinement are afforded more substantive and procedural due process safeguards than professional journalists facing revocation of their NYPD-issued press credentials. Compare Title 7, New York Codes, Rules & Regs., ch. V, sub ch. A (rules and procedures governing the implementation of standards of inmate behavior), with Title 38 Rules of the City of New

York, ch. 11, sub ch. B (appeal procedures governing denial or revocation of NYPD-issued press credentials).

153. As a result of the Defendants' revocation of Plaintiff's NYPD-issued press credential, Plaintiff's news-gathering activity has been significantly abridged, and he hasn't worked on-assignment for any client since December 12, 2015. As a result of Defendants' actions, Plaintiff is no longer working regularly for the *New York Daily News*, and has lost other employment as well, among other harm.

154. Lisa Bland returned Plaintiff's NYPD-issued press credential to him on Monday, June 27, 2016.

155. Plaintiff asserts his right to a jury trial.

CAUSES OF ACTION

AS AND FOR A FIRST CAUSE OF ACTION

156. Defendants DeBonis and Davis, as alleged above and incorporated here by reference, violated Plaintiff's First, Fourth and Fourteenth Amendment rights to freedom of the press, speech, assembly, intra-state movement and to petition the government for redress of grievances, when they abridged Plaintiff's news-gathering activity on October 30, 2015, by physically removing Plaintiff from the rescue scene on 38th street. Defendants' removal and forced movement of Plaintiff from the scene did not serve a compelling and content-neutral state interest. Instead, it was a content-based prior restraint of news-gathering intended to prevent the capture and communication of

imagery of dead or gravely injured victims. Further, even if Defendants' removal and forced movement of Plaintiff was intended to serve a content-neutral interest, it was not narrowly tailored – or even reasonably related – to serve that objective. Thus, Defendants violated Plaintiff's First, Fourth and Fourteenth Amendment rights.

AS AND FOR A SECOND CAUSE OF ACTION

157. Defendants DeBonis and Davis, as alleged above and incorporated here by reference, violated Plaintiff's Fourteenth Amendment right to equal protection of law. Defendants violated Plaintiff's right to equal protection of law when they abridged Plaintiff's news-gathering activity on October 30, 2015, by physically removing Plaintiff from the rescue scene, and revoking his press credential, when other similarly-situated news-gatherers were allowed to operate behind police lines at the rescue scene, including two NYPD-credentialed photojournalists who did not have their NYPD-issued press credentials taken. Removing Plaintiff from the scene, and only Plaintiff, and revoking Plaintiff's press credential, and only Plaintiff's, violated Plaintiff's Fourteenth Amendment right to equal protection of law.

AS AND FOR A THIRD CAUSE OF ACTION

158. Defendants DeBonis and Davis violated Plaintiff's right to substantive and procedural due process of law. First, Defendants DeBonis and Davis failed to afford Plaintiff "fair warning" that any objectionable conduct he engaged in was prohibited; specifically, notice that a frozen zone had been created during the rescue operation at

issue, and that Plaintiff was not allowed into the frozen zone. Second, Defendants DeBonis and Davis failed to afford Plaintiff a meaningful opportunity to be heard, before a fair and impartial decision-maker, until May 19, 2016.

AS AND FOR A FOURTH CAUSE OF ACTION

159. Defendants Bratton, Davis, Whyte and City of New York violated Plaintiff's First, Fourth and Fourteenth Amendment right to engage in news-gathering by creating, following, encouraging and enforcing an unwritten municipal policy, custom and practice of interfering with news-gathering by: (i) physically blocking cameras and otherwise physically interfering with news-gatherers engaged in news-gathering; (ii) confining news-gatherers to so-called "press pens" or other areas that do not provide visual or audio access to news-worthy events; and (iii) arbitrarily confiscating NYPD-issued press credentials from news-gatherers, who try to assert their First, Fourth and Fourteenth Amendment rights to engage in uncensored news-gathering.

RELIEF REQUESTED

WHEREFORE, Plaintiff requests judgment against Defendants as follows:

1. That this Court declare that the Defendants have followed and enforced an unwritten municipal policy, custom and practice of interfering with news-gatherers' access to events of public interest in public places by (i) physically blocking cameras and otherwise physically interfering with news-gatherers engaged in news-gathering; (ii) confining news-gatherers to so-called "press pens" or other areas that do not provide

visual or audio access to news-worthy events, sometimes even when the public is afforded access to areas where news-worthy events are occurring; and (iii) arbitrarily confiscating NYPD-issued press credentials from news-gatherers, who try to assert their First, Fourth and Fourteenth Amendment rights to engage in uncensored news-gathering, in violation of Plaintiff's First, Fourth and Fourteenth Amendment rights;

2. That this Court declare that the Defendants violated Plaintiff's First, Fourth and Fourteenth Amendment rights on October 30, 2015, when they physically interfered with his news-gathering activity during the rescue of a construction worker on 38th street, and further that they violated Plaintiff's First and Fourteenth Amendment right to procedural and substantive due process of law when they summarily revoked his NYPD-issued press credential without good cause, and without affording him a meaningful opportunity to be heard;

3. That this Court permanently enjoin the Defendants from continuing to enforce the foregoing policy, custom and practice;

4. That this Court enter declaratory and injunctive relief necessary and appropriate to remedy Defendants' violations of Plaintiff's rights under the First, Fourth and Fourteenth Amendments to the U.S. Constitution, including an Order:

(a) Requiring Defendants to adhere to and enforce NYPD Patrol Guide Procedure No. 212-49, to bring its existence to the attention of all NYPD officers and employees, including those in DCPI,

(b) Requiring Defendants to provide a mechanism whereby news-gatherers can file complaints for violations of NYPD Patrol Guide Procedure No. 212-49, and to discipline those officers who fail to follow the guidelines;

(c) Requiring Defendants to refrain from using press pens to segregate NYPD-credentialed news-gatherers, and from restricting news-gatherers' access, unless it is strictly necessary, that is, only if it is required to serve a compelling law-enforcement interest, is narrowly tailored to serve that interest, and the press pen is physically located as close as physically possible to the news-worthy event taking place;

(d) Requiring Defendants to refrain from providing privileged access to news-worthy events occurring in traditional public fora, that are temporary closed for emergency situations, to news-gatherers employed by City of New York, or any of its agencies, or any other news-gatherers, such as those employed by public service corporations, greater than the access allowed NYPD-credentialed news-gatherers;

(e) Requiring Defendants to refrain from denying NYPD-credentialed news-gatherers access to areas that members of the general public have access to, even if that access is only allowed under NYPD escort;

(f) Ordering Defendants to remove from NYPD-issued press credentials language that says they are the property of the NYPD and may be confiscated by any competent authority at any time, and enjoining any NYPD officer from confiscating NYPD-issued press credentials without "good cause," including advance notice of any proscribed, punishable conduct, and without a hearing;

(g) Requiring the establishment of a Special Master, ombudsman or oversight committee which is to be granted sufficient power and responsibility to resolve ongoing problems between news-gatherers and the NYPD, and to effectively monitor the NYPD's compliance with NYPD Patrol Guide Procedure No. 212-49 and this Court's Order; and

(h) Requiring that the hearing mandated by this Order upon the taking of an NYPD-issued press credential:

(i) shall be imitated before the revocation of the credential, or within seven days of its taking, and be concluded no later than thirty days of the taking, including issuance of the written decision required by this Order;

(ii) shall be conducted by a fair and impartial adjudicator, who must not be detailed to, or an officer within, DCPI;

(iii) that credential holders shall be afforded prior notice or "fair warning" of any objectionable conduct that could lead to revocation of the credential;

(iv) that credential holders shall be given a written specification of the alleged wrongful or objectionable conduct, at least 24-hours before the hearing, so as to allow the credential holder to know what the accusation is, thus allowing the news-gatherer to marshall a meaningful defense;

(v) that credential holders shall be afforded the right to call witnesses and present documentary evidence at the hearing;

(vii) that credential holders shall be afforded the right to be represented by counsel, or to have the assistance of a person of his or her choice, at the hearing;

(viii) that any determination to revoke a credential must be supported by a preponderance of evidence;

(ix) that any determination to revoke a credential must be supported by a written statement of the reasons for, and evidence relied on in, making the determination; and

(x) that the written statement required shall be issued and provided to the person whose credential was taken no later than thirty days after the day of the taking;

5. For appropriate compensatory and punitive damages in an amount to be determined at trial;

6. For an award of costs Plaintiff incurred in bringing and litigating this action; and

7. For such other and further relief as the Court deems just, proper and equitable.

DATED: June 29, 2016
Brooklyn, New York

Pursuant to, and in accordance with, 28 US § 1746:

I swear the foregoing under the penalty of perjury; as to matters alleged upon information and belief, I believe them to be true.

JASON B. NICHOLAS
Plaintiff, *Pro Se*

On January 27, 1908, photographers await a glimpse of Gladys Vanderbilt, the youngest daughter of railroad magnate Cornelius Vanderbilt, on the day of her wedding to Count László Széchenyi. They all carry large-format view cameras and wear an early press credential in their hats. (Courtesy of the Library of Congress.)

A

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

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THE DAILY NEWS, L.P.; THE NEW YORK TIMES COMPANY; NEWSDAY, INC.; THE ASSOCIATED PRESS; and THE NEW YORK PRESS CLUB, INC.,

Plaintiffs,

- against -

RUDOLPH GIULIANI, in his official capacity as Mayor of the City of New York; HOWARD SAFIR, in his official capacity as Police Commissioner of the City of New York; and THE CITY OF NEW YORK,

Defendants.

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COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs, The Daily News, L.P., The New York Times Company, Newsday, Inc., The Associated Press, and The New York Press Club, Inc. ("Plaintiffs"), for their Complaint herein allege:

INTRODUCTION

1. This civil rights action is brought by various newspaper publishers, a news gathering agency serving thousands of publishers, and a journalist advocacy group in the New York City area (collectively, "Plaintiffs"). Defendants in this action have systematically denied Plaintiffs and other media en-

tities legitimate access to crime, fire, and accident scenes, have physically interfered with Plaintiffs' and other media entities' ability to report the news, and have maintained, supported and followed a city-wide policy, custom and practice of routinely denying Plaintiffs and other media entities their rights under the First and Fourteenth Amendments of the United States Constitution and under article I, section 8 of the Constitution of the State of New York.

JURISDICTION

2. This action arises under and pursuant to the Constitution of the United States and the First and Fourteenth Amendments thereof, and 28 U.S.C. §§ 2201 and 2202 and 42 U.S.C. § 1983. This Court has jurisdiction of this action under 28 U.S.C. §§ 1331, 1343, and 1367.

VENUE

3. A substantial part of the events and omissions giving rise to the claims alleged herein arose in the Southern District of New York. Venue is proper in this district under 28 U.S.C. § 1391(b).

THE PARTIES

4. Plaintiff The Daily News, L.P. (the "Daily News") is a limited partnership, organized under the laws of the State of [New York] with its principal place of business in [New York, New York]. Plaintiff The Daily News is the publisher of the Daily News, a leading New York City newspaper with a daily circulation of approximately 764,000 and a Sunday circulation of approximately 990,000. The Daily News is devoted to informing the public of newsworthy events, including accidents, fires, demonstrations, and crimes committed in New York City.

5. Plaintiff The New York Times Company ("The New York Times" or "The Times") is a corporation organized under the laws of the State of [New York] with its principal place of business in [New York, New York.] Plaintiff The New York Times is the publisher of The New York Times, a national newspaper with a daily circulation of approximately 1,188,000 and a Sunday circulation of approximately 1,768,000. The New York Times is devoted to informing the public of newsworthy events, including accidents, fires, demonstrations, and crimes committed in New York City.

6. Plaintiff Newsday, Inc. ("Newsday") is a corporation organized under the laws of the State of [New York] with

its principal place of business in [Melville, New York.] Plaintiff Newsday is the publisher of Newsday, the sixth largest metropolitan daily newspaper in the country, with a circulation of approximately 570,000 in the New York metropolitan area. Newsday is devoted to informing the public of newsworthy events, including accidents, fires, demonstrations, and crimes committed in New York City.

7. Plaintiff The Associated Press ("AP") is a not-for-profit cooperative organized under the laws of the State of New York, which gathers news for over 1,500 newspapers and 5,000 broadcast outlets in the United States and over 15,000 news organizations worldwide. AP is devoted to informing the public of newsworthy events, including accidents, fires, demonstrations, and crimes committed in New York City.

8. Plaintiff The New York Press Club, Inc. ("New York Press Club") is a corporation organized under the laws of the State of [New York] with its principal place of business in [New York, New York]. New York Press Club is devoted to representing the interests of its members -- New York-based journalists and photojournalists -- and is committed to protecting freedom of the press. As part of its mission, New York Press Club advocates the rights of its members to have full access to

all potentially newsworthy events in the New York metropolitan area.

9. Defendant Rudolph W. Giuliani is the Mayor of the City of New York (the "Mayor") and is authorized and empowered to enforce its laws and is responsible for assuring that all agencies and departments of the New York City government comply with all applicable federal and state laws, including the Constitutions of the United States and the State of New York. Defendant Giuliani is named herein in his official capacity as Mayor.

10. Defendant Howard Safir is the Police Commissioner of the City of New York (the "Police Commissioner") and is authorized and empowered to enforce New York City regulations that govern the New York City Police Department's ("NYPD") behavior toward members of the press and is responsible for ensuring that the practices and customs of the NYPD and in conformity with all applicable federal and state laws, including the Constitutions of the United States and the State of New York. Defendant Safir is named herein in his official capacity as Police Commissioner.

11. Defendant the City of New York ("the City") is a municipal corporation organized under the laws of the State of New York and is responsible for ensuring that the policies,

customs and practices of the NYPD are in conformity with all applicable federal and state laws, including the Constitutions of the United States and the State of New York.

THE CITY'S PAST HISTORY OF COOPERATION WITH THE
PRESS AND RESPECT FOR THEIR FIRST AMENDMENT RIGHTS

12. The NYPD has, at least until a time period commencing in or around 1995, had a long-standing practice of cooperating with members of the press and providing them with access to accident, crime, fire, and demonstration scenes unless safety interests or proper performance of police duties required otherwise.

13. On or about February 28, 1992, the NYPD issued Patrol Guide Procedure 116-53, revision number 92-2, which set forth specific guidelines to be followed by officers involved in "Incidents Involving Media Representatives" (the "NYPD Media Guidelines") and put in writing what was previously the unwritten practice and policy of cooperation with the press. The NYPD Media Guidelines went into effect on or about March 6, 1992 and upon information and belief, the NYPD Media Guidelines remain in effect to this day. A copy of the NYPD Media Guidelines is annexed hereto as Exhibit A.

14. The stated purpose of the NYPD Media Guidelines is "[t]o cooperate with media representatives by not interfer-

ing or allowing others to interfere with media personnel acting in their news gathering capacity." (NYPD Media Guidelines at 1)

15. As to coverage of newsworthy events that occur on public property, the NYPD Media Guidelines specifically state that "[Police Officers] will NOT interfere with the video taping or the photographing of incidents in public places. Intentional interference such as blocking or obstructing cameras or harassing the photographer constitutes censorship." (NYPD Media Guidelines at 2) (emphasis in original)

16. The NYPD Media Guidelines further provide that "Working Press Cards clearly state, the bearer 'is entitled to cross police and fire lines.' This right will be honored and access will NOT be denied." (NYPD Media Guidelines at 2) (emphasis in original) The only limitation on this right is for interior crime scenes or areas frozen for security reasons.

17. As to coverage of newsworthy events that occur on private property or spill over onto private property, the NYPD Media Guidelines specifically state that the following code of conduct will be adhered to by Police Officers:

> "(a) To the extent it is feasible to do so, (e.g., unless safety interests or proper performance of police duties require otherwise), the media's access to

demonstrations on private property will not be impeded by the Department;

(b) The media will be given access as close to the activity as possible, with a clear line of site and within hearing range of the demonstration;

(c) When demonstrations spill over or occur on private property, members of the media will not be arrested for criminal trespass, unless an owner or representative expressly indicates that the press is not to be permitted to enter or remain on the property;

(d) If the ranking officer at the demonstration determines that press access must be restricted in certain circumstances (i.e., in order for the Department to carry out its law enforcement functions), he retains the discretion to do so;

(e) Properly credentialed members of the press assigned to such demonstrations should identify themselves to the commanding officer at the scene."

(NYPD Media Guidelines at 2) (emphasis in original)

18. The NYPD Media Guidelines were generally adhered to by the City and NYPD until a time period commencing in and around 1995.

19. The NYPD's adherence to the NYPD Media Guidelines helped to ensure that Plaintiffs and other members of the press were able to function effectively in their role as surrogates for the public and report fully and fairly concerning newsworthy events in New York City.

THE CITY'S RECENT POLICY, CUSTOM AND PRACTICE OF VIOLATING PLAINTIFFS' RIGHT OF ACCESS TO NEWSWORTHY EVENTS AND DISREGARD OF THE NYPD MEDIA GUIDELINES

20. During the tenure of Defendant Giuliani's administration as Mayor of the City of New York ("the Giuliani Administration") -- from approximately 1995 to the present -- the NYPD has consistently ignored the NYPD Media Guidelines and instead followed a policy, custom, and practice of interfering with media access to newsworthy events in public and private places. This has resulted in repeated violations of Plaintiffs' rights under the First and Fourteenth Amendments of the United States Constitution and under article I, section 8 of the Constitution of the State of New York.

21. This departure from adherence to the NYPD Media Guidelines and pattern of interference with the press' ability to do its job has continued to this day.

22. Over the past several years, Defendants Giuliani and Safir and their staffs have been repeatedly informed of the existence of this unwritten policy, custom, and practice by the Plaintiffs through letters, written submissions, and/or face-to-face meetings, detailing the numerous and continual civil rights violations of the NYPD against the press.

23. Upon information and belief, Defendants have persistently failed to discipline police officers who have violated both the NYPD Media Guidelines and the civil rights of Plaintiffs, failed to abolish the policy, custom and practice of press censorship and obstruction by the NYPD, and failed to reaffirm the NYPD Media Guidelines.

24. Defendant Giuliani's and Defendant Safir's acquiescence in this pattern of misconduct constitutes a municipal policy or custom of the City that violates Plaintiffs' rights under the First and Fourteenth Amendments of the United States Constitution and under article I, section 8 of the Constitution of the State of New York.

25. These violations evidence a pattern of violations by the City which may be summarized in four broad categories:

(a) First, in recent years the NYPD has repeatedly interfered with press photographers and reporters, including Plaintiffs' members and employees, by physically blocking camera lenses or the scene of newsworthy events, even when no threat to public safety exists and the press photographers and reporters are not interfering with the NYPD's law enforcement function in any way.

(b) Second, the NYPD in recent years has also routinely interfered with press photographers and reporters, including Plaintiffs' members and employees, by segregating and confining them to poorly positioned "press pens," even when there has been no legitimate security or law enforcement reason for such pens. In many cases, these pens have been positioned so far away from the scene of the crime, fire, accident, or demonstration as to deny press photographers and reporters access to the scene altogether.

(c) Third, in many cases in recent years, press photographers and reporters, including Plaintiffs' members and employees, have been unnecessarily confined to pens and/or other areas that were poorly positioned for covering the event in question, while civilians have been granted free access to the general area.

(d) Fourth, in recent years the NYPD has further interfered with Plaintiffs' photographers and reporters' right to access by arbitrarily confiscating and/or threatening to confiscate press cards -- which entitle the bearer to cross police and fire lines absent legitimate security concerns -- without procedures for determining